## DETAILED ACTION

1. This office action is in response to the amendments filed on 12/28/2009.

Claims 1-12, 14, 22-29 remain pending in this application.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-8, 11-12, 14, 22-29 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Daniel et al US 6,001,118 in view of Phillips et al 5,972,505.

Claims 1 and 11: Daniel et al disclose an embolism protection device 212, fig. 17a comprising a delivery tool 214 and a plurality of fibers 218, where the fibers are associated with the delivery tool and have a deployed configuration that fills the lumen of a vessel having a diameter corresponding to that of a human vessel in the form of a porous filtration structure that blocks a substantial majority of particulates with a diameter greater than about 0.2 mm while allowing the passage of blood cells (see col. 10, lines 36-41, col. 14, lines 10-13).

Daniel et al are silent regarding the polymer fibers that have surface capillaries that characterized by one or more grooves along the length of the fibers.

Phillips et al teach the polymer fibers that have surface capillaries that characterized by one or more grooves along the length of the fibers (figures 8-12, col. 1, lines 35-41, col. 15, lines 1-20, col. 17, lines 35-52).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Daniel's embolism protection device with the polymer fibers that have surface capillaries that characterized by one or more grooves along the length of the fibers as taught by Phillips in order to have the ability to hold or wickability liquids or blood and the ability to use these fibers to form a porous filtration structure.

Claims 14, 23-24: Daniel et al disclose a method comprising placing an embolism protection device (figures 17a, b) within a patient's vessel; wherein placing of the fibers 218 is performed with the delivery tool 214, and wherein the delivery tool holds the fibers in a configuration for passage through a sheath for deployment of the fibers within a vessel (figures 17a, b).

Claims 25-26, 28-29: Daniel et al disclose the fibers are deployed to the porous filtration structure that fills the lumen of the vessel, where the tool comprises a guidewire and wherein the fibers attached to the tool with an adhesive (figures 17a, b, see col. 10, lines 36-41, col. 14, lines 10-13).

Claims 2-4: Phillips et al teach the fibers comprise a hydrophilic polymer (see col. 9, lines 37-43), wherein the fibers comprise polyester and bioresorbable polymer (see col. 14, lines 37-51, col. 17, lines 35-40).

Claims 5-8: Phillips et al teach the fibers are within a fabric (see col. 1, lines 35-37), wherein the fibers have a curled configuration (figures 10, 12) at body temperature, and wherein the fibers are in a bundle (fig. 19, col. 24, lines 28-35).

Claim 12: Phillips et al teach the device further comprising a biocompatible adhesive (see col. 10, lines 50-67).

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daniel et al in view of Phillips et al as applied to claim 1 above, and further in view of Tu et al 5,061,276.

Daniel et al in view of Phillips et al disclose the invention substantially as claimed except for the fibers are grafted with a second polymer which is a hydrogel. However, Tu et al teach that the fibers are grafted with a second polymer which is a hydrogel (figures 7, 8, col. 19, lines 30-33). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Daniel et al in view of Phillips with the fibers are grafted with a second polymer which is a hydrogel as taught by Tu in order to provide a desired degree of elasticity while maintaining a desired degree of porosity of the fiber.

### *Response to Arguments*

4. Applicant's arguments filed 12/28/2009 have been considered but are moot in view of the new ground(s) of rejection.

### *Conclusion*

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VICTOR X. NGUYEN whose telephone number is (571)272-4699. The examiner can normally be reached on M-F (8-4.30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, AnhTuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/VN/
Examiner, Art Unit 3731
4/7/2010

/Gary Jackson/
Supervisory Patent Trainer
TC 3700
April 10, 2010